

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JAMES D. SUNDLY,

Plaintiff,

ORDER

v.

08-cv-506-slc

DEP. J. WILSON, DEP. MARKGRAF
DEP. SEELEY, DEP. MILLER, SGT. PORTER
DEP. KOWALSKI, and DEP. PIERCE,

Defendants.

In this case plaintiff was allowed to proceed *in forma pauperis* on his claim that defendants Wilson, Markgraf, Miller and Seeley used excessive force against him and that defendants Porter, Kowalski and Pierce failed to provide him with appropriate medical care after he broke his finger. On January 7, 2009, the court received plaintiff's motion to compel discovery in which he asks the court to compel defendants to produce evidence in the case including photographs, medical records and written statements.

In his response to plaintiff's motion defendant Kowalski correctly points out that plaintiff's motion to compel discovery is premature. Pursuant to Fed. R. Civ. P.37, a motion to compel discovery may be filed when a party fails to produce documents that have been properly requested under Fed. R. Civ. P. 34. In this case, plaintiff has failed to serve a request for production of documents on any defendant.

As defendant Kowalski suggests, I will consider plaintiff's motion to compel discovery to be a request for production of documents. Pursuant to Fed. R. Civ. P. 34(b)(2)(A), defendants have thirty days from the date of this order to respond to plaintiff's request for production of documents. Therefore, I will deny plaintiff's motion to compel discovery as premature.

ORDER

IT IS ORDERED that plaintiff's motion to compel discovery, dkt. #34, is DENIED as premature.

Entered this 22nd day of January, 2009.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge